

# Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

## MEMORANDUM

Daniel J. Becker  
State Court Administrator  
Myron K. March  
Deputy Court Administrator

**To: Heather Mackenzie-Campbell, Audit Manager**

**From: Brent Johnson, General Counsel**

**Re: Violation of Plea in Abeyance**

**Date: November 29, 2006**

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This memorandum is in response to your e-mail asking various questions about the adjustment of a plea in abeyance fee when the agreement is violated and the defendant is subsequently sentenced. The questions revolve around Utah Code Ann. § 77-2a-4(1) which states that “upon entry of judgment of conviction and imposition of sentence, any amounts paid by the defendant as a plea in abeyance fee prior to termination of the agreement shall be credited against any fine imposed by the court.” According to your e-mail, the judges in the second district do not specifically give credit for the payments already made. There is also a proposal to redistribute the plea in abeyance fee when a conviction is entered.

Answering the questions that you have posed is somewhat difficult because the statute can be read at least a couple of different ways. Because of this ambiguity, we can establish our practices in accordance with what we determine to be best for the system.

We should probably treat the plea in abeyance fee as not losing its characteristics as a plea in abeyance fee even though an agreement is violated and a conviction is entered. This is a legitimate position because, by entering into a plea in abeyance agreement, a defendant purchases the benefit of an abeyance. This purchased benefit is not extinguished even though conviction has been entered. The defendant had the benefit of that bargain, but chose to violate the agreement. The court would not redistribute amounts previously paid. This would, however, leave a lingering question as to how the subsequent fine should be entered into the system.

Because we must give credit for amounts previously paid there are several ways that this could occur and be set up in the system. Suppose a fine of \$1,000.00 and \$100.00 previously paid for the following scenarios:

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- a. A judge orders a fine of \$1,000.00 and is silent about credit for the plea in abeyance fee. The court must give credit for the previous \$100.00 paid, and this would presumably happen clerically. This would leave \$900.00 owing. Because the court ordered \$1,000.00, this is probably the amount that should be entered into the system, with a note that a \$100.00 credit is given and \$900.00 remains.
- b. It is perhaps also possible that the minute entry could reflect a \$1,000.00 fine, with a clerical adjustment of \$100.00, and a \$900.00 fine is then entered into the system.
- c. The judge orders a fine of \$1000.00 and then specifically gives credit for the \$100.00 previously paid. This would also probably be entered as a \$1000.00 fine with a \$100.00 credit.
- d. A judge declares that the judge has considered amounts previously paid and after giving credit for those amounts specifically orders a fine of \$1,000.00. Because the judge has considered and mentally given credit for the amounts previously paid, the accounts receivable would be set up as \$1,000.00.

Under any of these scenarios we would not redistribute the \$100.00 that was paid. Once money has been paid and turned over to the appropriate entities we do not have authority to redistribute. However, we should probably treat the \$100.00 as if it had been redistributed and account for the remaining amount accordingly.

As I have considered the various scenarios, it is apparent that this could become an accounting nightmare. If it is not possible to resolve the accounting issues, I would suggest a change to the statute that does not automatically require a credit, but simply states that the court shall consider any amounts previously paid by the defendant. It might be best if we sit down and discuss the issues.